

## WILDLIFE SERVICES STUDY - BACKGROUND MEMORANDUM

Section 6 of House Bill No. 1009 ([Appendix A](#)) directs the Legislative Management to study the cooperative agreement between the Agriculture Commissioner and the United States Department of Agriculture Wildlife Services program. The bill was the appropriations bill for the Agriculture Commissioner. The study must include:

1. A review of current program funding sources.
2. A review of wildlife damage control programs in other states, including South Dakota.

The legislative history reveals concern over funding sources as expressed by the State Auditor in a performance audit report on May 9, 2008. The House Appropriations Committee members focused on the aerial hunting activities of Wildlife Services. The concern was over the amount of money being provided to the federal government for which there was not the return of adequate services or accounting for services. One option was to review South Dakota's program, which is administered by the South Dakota Department of Game, Fish and Parks.

Testimony from agriculture producers supported increased funding due to the high number of coyotes and increased costs for fuel, maintenance, and vehicle replacement. In addition, the heavy snow had created a hardship on trappers and increased domestic livestock predation due to easier access to prey.

### WILDLIFE SERVICES PROGRAM

Because of the recent performance audit, most of this portion of the memorandum is updated information from the performance audit report.

The North Dakota Wildlife Services program is a cooperative effort of state and federal agencies to provide management of wildlife in situations impacting livestock producers, farmers, homeowners, airports, and public land managers. Authority for the program comes from the Animal Damage Control Act of March 2, 1931 (7 U.S.C. 426, 426b), and the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988 (7 U.S.C. 426c). The program is administered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Wildlife Services. A cooperative service agreement between APHIS and the North Dakota Department of Agriculture is entered each biennium ([Appendix B](#)). A separate cooperative service agreement is entered each biennium between the North Dakota Department of Agriculture and the North Dakota Game and Fish Department which relates to funding of the program ([Appendix C](#)).

Pursuant to North Dakota Century Code Section 4-01-17.1, the Agriculture Commissioner may cooperate with APHIS or other appropriate federal agencies in the control and destruction of fur-bearers, including coyotes, wolves, bobcats, and foxes that are

injurious to livestock, poultry, and big and small game; injurious field rodents; big game threatening human health or domestic livestock; and birds causing crop damage, substantial economic loss or threats to human health. Although the control and destruction must be approved by the Game and Fish Department, the Agriculture Commissioner may enter agreements with the Game and Fish Department and federal agencies for methods of control and destruction, supervision, and the use and expenditure of funds.

While the program has had various names and has been placed in different federal agencies, the annual reports prepared by the federal government on the program in North Dakota identified minimizing/reducing economic loss and/or minimizing damage caused by wildlife as a primary purpose. The following brief outline of the history of the program in the state is taken from annual reports:

- 1949 - The Predator Control program was administered by the United States Fish and Wildlife Service, Bureau of Sports Fisheries and Wildlife Division, and was providing services for the district of Nebraska, North Dakota, and South Dakota with the main office in Mitchell, South Dakota.
- 1961 - In February North Dakota became a separate district.
- 1966 - The branch of Predator and Rodent Control reorganized as the Division of Wildlife Services which included Animal Control and functions of Wildlife Enhancement and Pesticides Surveillance.
- 1969 - Wetland enhancement activities became an operational branch of the Division of Wildlife Services.
- 1974 - Administration of the program went from the Bureau of Sports Fisheries and Wildlife Division to the Department of Interior, United States Fish and Wildlife Service; for the first time, all funding for the program was from federal and state appropriations (previously counties and other entities provided funding).
- 1985 - The Animal Damage Control program was officially transferred from the Department of Interior, United States Fish and Wildlife Service, to the Department of Agriculture, Animal and Plant Health Inspection Service.

The Wildlife Services program is administered and operated by APHIS. The North Dakota Department of Agriculture has a cooperative service agreement with this entity for the program and is responsible for the primary monitoring of the program by the state. However, while the primary monitoring responsibility is with this state entity, the primary state funding source is the North Dakota Game and Fish Department. The Game and Fish Department relies on the Department of Agriculture to monitor the use of the funds being

provided and, as stated by the report, has very little if any input as to how the funds are to be used. The report recommended a review of the monitoring and funding of the program.

State funding for the program is identified in the table below:

<b>Biennium</b>	<b>Game and Fish (Special Funds)</b>	<b>Department of Agriculture (General Fund)</b>	<b>Total</b>
2003-05 <sup>1</sup>	\$550,000	\$250,000	\$800,000
2005-07 <sup>2</sup>	\$680,000	\$250,000	\$930,000
2007-09 <sup>3</sup>	\$680,000	\$240,000	\$920,000
2009-11 <sup>3</sup>	\$768,000	\$298,600	\$1,066,600

<sup>1</sup>Expenditure amount.  
<sup>2</sup>Expenditure amount, including emergency appropriation from the 2007 Legislative Assembly.  
<sup>3</sup>Appropriated amount.

According to the cooperative service agreement between APHIS and the Department of Agriculture, state funds are to be used to reimburse APHIS for expenditures of the Wildlife Services program. Expenditures listed in the cooperative service agreement include salaries for 10 wildlife specialists and 1 pilot (or as many personnel as dictated by funding levels and need), miscellaneous expenses for the repair of equipment and supplies needed in performing official duties, and costs of vehicle and aircraft operations. Total amounts are identified for the following categories: salaries, vehicle fuel/oil, vehicle repairs, vehicle tires, aircraft fuel, aircraft labor, aircraft parts, aircraft hangar rent, and miscellaneous vehicle/ATV.

Federal funding for the Wildlife Services program was obtained from the APHIS regional office. Federal funds are made available every federal fiscal year (October 1 through September 30). Federal funding of the program is to be used to pay for federal retirement, insurance, and health care programs for the wildlife specialists and pilot. Federal funding is also to be used to replace vehicles used in the operation of the wildlife damage management program. Additional federal funding is provided to the APHIS office in Bismarck for other projects. Federal funding for the program is identified in the following table:

<b>Federal Fiscal Year</b>	<b>Wildlife Services Program North Dakota</b>	<b>Blackbird Directive</b>	<b>Cattail Directive</b>
2003	\$399,790	\$320,201	\$87,011
2004	\$387,136	\$318,603	\$86,577
2005	\$612,913	\$285,614	\$77,612
2006	\$624,360	\$303,121	\$78,041
2007	\$635,614	\$314,873	\$78,896

<sup>1</sup>Federal funding can be used by the APHIS office in Bismarck for activities in both North Dakota and South Dakota.

As a result of the performance audit, the following 11 recommendations were made by the State Auditor:

1. The Department of Agriculture pay salaries of the Wildlife Services' field specialists and other cost(s) which can be verified in a timely and efficient manner.
2. The Department of Agriculture review the time of the pilot charged to the Wildlife Services program and determine what percentage of the pilot's salary will be paid by the state.
3. The Department of Agriculture require travel time of the Wildlife Services' field specialists be adequately documented.
4. The Department of Agriculture monitor field specialists' time charged to office, bad weather, miscellaneous, or similar categories. Appropriate action should be taken if time charged to these categories is excessive.
5. The Department of Agriculture periodically verify the Wildlife Services program billed amounts are adequately supported and reasonable.
6. The Department of Agriculture require the Wildlife Services' field specialists dedicate a certain amount of time in the fall to the state blackbird problem.
7. The Department of Agriculture improve monitoring of cooperative service agreements to ensure compliance with requirements.
8. The Department of Agriculture ensure appropriate changes are made to the cooperative service agreements to address recommendations included in this audit report as well as to:
  - a. Approve or require information be provided for salary increases of field specialists prior to being effective;
  - b. Establish performance measures to evaluate the program;
  - c. Require only necessary reports or information regarding the program; and
  - d. Identify if, when, and where state funds are to be used for issues arising in urban areas.
9. The Department of Agriculture, with assistance from the Attorney General's office, review North Dakota Century Code requirements related to the Wildlife Services program. Appropriate action should be taken to modify or clarify sections to make requirements clear and up to date.
10. The Department of Agriculture and the Game and Fish Department formally identify advantages and disadvantages for the current monitoring and funding of the Wildlife Services program. A determination should be made as to whether the primary monitoring and/or primary funding of the program need changing.

11. The Department of Agriculture obtain necessary federal budget and expenditure data for monitoring and budgeting purposes.

In response to Recommendation No. 9, the Legislative Assembly enacted House Bill No. 1125 (2009). This bill authorized the Agriculture Commissioner to cooperate with APHIS in controlling and destroying specifically listed animals. The bill broadened the authorization to include not just coyotes, wolves, bobcats, and foxes, but all furbearers; not just injurious field rodents in rural areas, but all such rodents; and not just certain nongame species of birds that cause crop damage or substantial economic loss, but all birds that cause crop damage or substantial economic loss or which threaten human health. In addition, the bill extended the authorization to control and destroy big game that threatens human health or domestic livestock.

In addition, since the performance audit and the 2009 legislative session, a new workplan between the Department of Agriculture, Game and Fish Department, and APHIS has been entered by the parties ([Appendix D](#)).

### **SOUTH DAKOTA**

South Dakota is the only state to administer Wildlife Services programs through a natural resources agency, for example and for comparison, the North Dakota Game and Fish Department. Some states have a cooperative effort, for example, North Dakota, but that cooperative effort is with an agriculture-related agency.

In the mid-1970s, all states were given the option of administering a predator control program. Several states took the option, all of which returned to federal administration within five years, except for South Dakota. In 1974 the South Dakota Department of Game, Fish and Parks accepted the option of responsibility for some federal Wildlife Services duties. Some duties stayed with the federal Wildlife Services. For example, blackbird control is a federal responsibility. With the duties came federal funding to the state. In the beginning, all that was required by the state to maintain the funding was an annual report.

The money provided to South Dakota was earmarked. The federal funding portion was very close to 100 percent in the early years, dropping to

30 percent by 2001. Although the state received the same amount of funding each year--\$300,000--as grant-in-aid funding, inflation has affected what could be purchased with the funding. From 2002 through 2006, South Dakota received earmarked funds equaling the grant-in-aid funds. In 2007 Congress eliminated earmarked funding. However, in 2007 some funding--\$277,000--was provided within the general operating budget of Wildlife Services.

In 2008 South Dakota and Wildlife Services entered a cooperative agreement and Wildlife Services funded the South Dakota predator control program through operational program funding, a more protected source of funding. In federal fiscal year 2008, an estimated \$593,000 was appropriated for predator control in South Dakota and the South Dakota Department of Game, Fish and Parks received \$402,000 of those funds. In fiscal year 2009, \$426,000 was appropriated for South Dakota. However, the federal Wildlife Services now administers and pays for the aerial component of the program. As such, these expenses are paid first and it is expected the South Dakota Department of Game, Fish and Parks will receive approximately \$35,000.

The state of South Dakota otherwise funds Wildlife Services programs through a head tax on cattle and sheep. The tax is charged to each county, which in turn charges each property owner in the county based on livestock in the county. This money is matched on a 2-to-1 basis by the South Dakota Department of Game, Fish and Parks for total funding of approximately \$900,000. In addition, South Dakota has a \$5 surcharge on hunting licenses, of which \$2.50 goes to rancher depredation complaints.

### **SUGGESTED STUDY APPROACH**

Because of the recent concerns expressed regarding state funds being used by Wildlife Services, the committee may wish to monitor changes in response to recommendations of the performance audit report and legislative concerns. If issues remain as to the operation of Wildlife Services, the committee may address those issues. In addressing those issues, it may be useful to receive testimony on other states' programs as they relate to those issues.

ATTACH:4

**SECTION 6. LEGISLATIVE COUNCIL STUDY - WILDLIFE SERVICES.** During the 2009-10 interim, the legislative council shall consider studying the cooperative agreement between the agriculture commissioner and the United States department of agriculture wildlife services program. The study, if conducted, must include a review of current program funding sources and a review of wildlife damage control programs in other states, including South Dakota. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Agreement Number: 09-73-38-6214-RA  
Accounting Code: 973-7338-014

FY10, 11

**WILDLIFE SERVICES  
COOPERATIVE SERVICE AGREEMENT  
Agreement No. 2009 - 89**

The parties to this Agreement are the State of North Dakota, acting through its Department of Agriculture (STATE), and the United States Department of Agriculture (USDA)-Animal and Plant Health Inspection Service (APHIS)-Wildlife Services (WS) and hereinafter referred to as the APHIS.

**1. PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to establish a cooperative relationship between STATE and APHIS to provide reimbursement of services by APHIS for wildlife damage management activities to mitigate wildlife conflicts to agriculture, natural resources, property, and human health and safety.

**2. SCOPE OF SERVICE**

APHIS, in exchange for the compensation/reimbursement paid by the STATE under this Agreement, agrees to:

- a. Designate State Director Phil Mastrangelo as its authorized representative who shall be responsible for collaboratively administering the activities as outlined in this Agreement. (Phil Mastrangelo, State Director, USDA/APHIS/Wildlife Services, 2110 Miriam Circle, Suite A, Bismarck, ND 58501-2502)
- b. Confer with STATE to design and implement a plan for wildlife damage management activities in North Dakota.
- c. Develop an annual Work/Financial Plan that will be incorporated into this Agreement by reference. The Agreement period for the first annual Work/Financial Plan is July 1, 2009 through June 30, 2010. The STATE and APHIS must agree to, and sign a new Work/Financial Plan for the second year of the 2009-2011 state biennium, the period of July 1, 2010 through June 30, 2011.
- d. Coordinate with STATE any media contacts and information incorporated into reports and/or publications, providing the identities of the involved parties when receiving due credit related for the activities covered by this Agreement.
- e. Conduct activities specified in the Work/Financial Plan within APHIS Animal Welfare Standards and Regulations.
- f. Conduct all activities in accordance with applicable Federal, State, and local laws and regulations.

STATE agrees:

- a. That APHIS has advised STATE that private sector service providers may be available to provide wildlife management services and notwithstanding these other options, STATE requests that APHIS provide wildlife management services as stated under the terms of this Agreement.
- b. To reimburse APHIS for costs, not to exceed the annually approved amount specified in the Work/Financial Plan. If costs are projected to exceed the amount reflected in the Work/Financial Plan, the Work/ Financial Plan shall be formally revised and signed by both parties before services resulting in additional costs are performed. The STATE agrees to pay all approved costs of service within 30 days of being invoiced by APHIS. Late payments are subject to interest, penalties, and administrative charges and costs as set forth under the Debt Collection Improvement Act of 1996. If the STATE is delinquent in paying the full amount of the due service costs submitted by APHIS, and/or is delinquent in paying the due late payments, and/or is delinquent in paying the interest, penalties, and/or administrative costs on any delinquent due service costs, APHIS will immediately cease to provide the respective service associated with the submitted service costs. APHIS will not reinstate or provide the respective service until all due service costs, and/or due late payments, and/or due interest, penalty, and/or administrative costs are first paid in full.
- c. That this Agreement is contingent upon the passage by Congress of an appropriation from which expenditures may be legally met and shall not obligate APHIS upon failure of Congress to so appropriate.
- d. The performance of wildlife damage management actions by APHIS under this agreement is contingent upon a determination by APHIS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. APHIS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.
- e. That this Agreement is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this Agreement, APHIS provides goods or services on a cost recovery basis to nonfederal recipients.
- f. That nothing in this Agreement shall prevent any other State agency, organization or individual from entering into separate Agreements with APHIS or the STATE for the purpose of managing human/wildlife conflicts.
- g. That STATE ensures and certifies that it is not currently debarred or suspended and is free of delinquent Federal debt.

### **3. TERM OF AGREEMENT**

The term of this Agreement commences on the 1st day of July, 2009, and terminates on the 30th day of June, 2011.

4. **COMPENSATION**

STATE's financial obligation is a maximum of \$1,067,400. As more fully explained in Exhibit A, at the end of each quarter APHIS will submit to STATE a statement of salaries and expenses for which it seeks STATE's reimbursement. APHIS must prepare and provide to the STATE by July 1, 2011, a report describing all work done under this Agreement. The final payment will be made only if STATE approves the final report.

5. **TERMINATION OF AGREEMENT**

- a. **Termination without cause.** This Agreement may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
- b. **Termination for lack of funding or authority.** The STATE may terminate this Agreement effective upon delivery of written notice to the APHIS, or on any later date stated in the notice, under any of the following conditions:
  - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The Agreement may be modified by agreement of the parties in writing to accommodate a reduction in funds.
  - 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
  - 3) If any license, permit or certificate required by law, rule or terms of this Agreement, is for any reason denied, revoked, suspended or not renewed which prevents APHIS from accomplishing the purpose of this Agreement.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- c. **Termination for cause.** The STATE by written notice of default to APHIS may terminate the whole or any part of this Agreement:
  - 1) If APHIS fails to provide services required by this Agreement within the time specified or any extension agreed to by the STATE; or
  - 2) If APHIS fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of the STATE provided in the above clause related to defaults by APHIS are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

6. **FORCE MAJEURE**

APHIS shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond APHIS's reasonable control and APHIS gives notice to STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

7. **RENEWAL**

This Agreement will not automatically renew.

8. **MERGER AND MODIFICATION**

This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

9. **SEVERABILITY**

If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.

10. **ASSIGNMENT AND SUBCONTRACTS**

APHIS may not assign or otherwise transfer or delegate any right or duty without the STATE's express written consent. However, APHIS may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments. APHIS is solely responsible for the performance of any subcontractor. APHIS shall not have the authority to contract for or incur obligations on behalf of the STATE.

11. **NOTICE**

All notices or other communications required under this Agreement shall be given in writing and are complete on the date mailed when addressed to the parties at the following addresses:

Regional Director, Western Region  
USDA-APHIS-WS  
2150 Centre Avenue, Building B  
Mail Stop 3W9  
Fort Collins, CO 80526

Robert Christman, Deputy Commissioner  
North Dakota Department of Agriculture  
600 East Boulevard Ave  
Bismarck, ND 58505-0020

**12. APPLICABLE LAW AND VENUE**

APHIS WS has statutory authority under the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C.426-426b) as amended, and the Act of December 22, 1987 (101 Stat. 1329-331, 7 U.S.C. 426c), for the Secretary of Agriculture to cooperate with States, individuals, public and private agencies, organizations, and institutions in the control of wild mammals and birds that are reservoirs for zoonotic diseases, or are injurious or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and public health and safety.

This Agreement is governed by and construed in accordance with Federal law and the laws of the State of North Dakota. Any action to enforce this Agreement must be brought in the U.S. District Courts of North Dakota.

**13. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

APHIS shall promptly notify STATE of all potential claims which arise or result from this Agreement. APHIS shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the STATE the opportunity to review and inspect the evidence, including the scene of an accident.

**14. INDEMNITY**

The State and APHIS each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

APHIS assumes no liability for any actions or activities conducted under this Agreement except to the extent that recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401(b), and 2671-2680).

**15. INSURANCE**

APHIS, as a Federal agency, is self insured for tort liability under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401(b), and 2671-2680).

**16. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

The STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The STATE does not waive any right to a jury trial.

17. **CONFIDENTIALITY**

APHIS agrees not to use or disclose any information it receives from the STATE under this Agreement that the STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the STATE or unless required by Federal law. The STATE agrees not to disclose any information it receives from APHIS that the APHIS has previously identified as confidential. The duty of STATE and APHIS to maintain confidentiality of information under this section continues beyond the term of this Agreement, or any extensions or renewals of it. The Provisions of this paragraph, however, are subject to federal law.

18. **COMPLIANCE WITH PUBLIC RECORDS LAW**

APHIS understands that, except for disclosures prohibited in Section 17, the STATE must disclose to the public upon request any records it receives from APHIS. APHIS further understands that any records which are obtained or generated by APHIS under this Agreement, except for records that are confidential under Section 17, may, under certain circumstances, be open to the public upon request under the North Dakota open records law

19. **WORK PRODUCT, EQUIPMENT AND MATERIALS**

No work products or materials will be purchased under this agreement.

20. **INDEPENDENT ENTITY**

APHIS is an independent entity under this Agreement. APHIS retains sole and absolute discretion in the manner and means of carrying out APHIS's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

21. **NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

APHIS agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to all Federal law relating to nondiscrimination, accessibility and civil rights. APHIS shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.

22. **RECORDS AND STATE AUDIT**

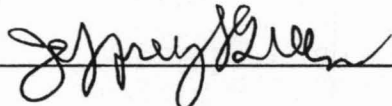
APHIS agrees to maintain all financial records regarding the direct and In Kind expenditures related to this Agreement. All records, regardless of physical form, and the accounting practices and procedures of APHIS relevant to this Agreement are subject to examination by the North Dakota State Auditor or the Auditor's designee to the extent allowed by Federal law. APHIS will maintain all such records for at least three years following completion of this Agreement.

23. **TAXPAYER ID**

North Dakota federal employer ID number is: 45-039764.

24. **SIGNATURES**

USDA-APHIS-WS

  
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Jeffrey S. Green, Ph. D.  
Regional Director, Western Region

DATE: 8/10/09

STATE OF NORTH DAKOTA

  
\_\_\_\_\_

Robert Christman  
Deputy Commissioner

DATE: July 28, 2009

COOPERATIVE SERVICE AGREEMENT  
between  
NORTH DAKOTA GAME AND FISH DEPARTMENT (NDGFD)

And

NORTH DAKOTA DEPARTMENT OF AGRICULTURE (NDDA)  
In conjunction with  
UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
WILDLIFE SERVICES (WS):  
AGREEMENT NUMBER 2009-89  
AGREEMENT NUMBER 09-73-38-6214-RA

Article 1

The purpose of this Agreement is to cooperate in wildlife damage management projects to reduce domestic livestock losses, to protect man-made and natural resources, and human health and safety.

Article 2

Authority exists under the Animal Damage Control Act of March 2, 1931, (7 U.S.C. 426-426b and 426c, as amended) for the Secretary of Agriculture to cooperate with States, individuals, and public and private agencies, organizations, and institutions to control wildlife.

Article 3

NDGFD, NDDA, and WS mutually agree that, as cooperating parties, they will carry out program activities in accordance with the work and financial plans developed for this Agreement and the Cooperative Service Agreement between the North Dakota Department of Agriculture and Wildlife Services

Article 4

NDGFD Agrees:

- A. To provide \$768,000 to North Dakota Department of Agriculture to reimburse WS for salaries and benefits of 9 Wildlife Specialists, 1 pilot, and other necessary personnel performing duties under this agreement between **July 1, 2009 and June 30, 2011** as spelled out in the cooperative Agreement between the North Dakota Department of Agriculture and the USDA Wildlife Services and defined in Article 5 of this agreement.
- B. To designate to WS their authorized representative who will serve as a contact under this Agreement.
- C. To meet annually or more often if mutually agreed to discuss work activities associated with this cooperative agreement.

#### Article 5

##### WS Agrees:

- A. To provide supervision, aircraft, pilots, personnel, equipment, supplies, and other support material necessary to perform wildlife damage management activities in accordance with Federal and State aerial hunting laws, regulations, and policies. WS activities will mitigate damage caused by wildlife, which are under the management authority of NDGFD. These include predators, beaver, muskrat, waterfowl, and other furbearer and game species.
- B. To provide NDGFD an annual report or more frequent if requested, of WS operational activity, including hours flown and number of each species taken, by control method and district, if requested, and any other pertinent information that may be requested.
- C. That WS shall confer frequently with NDGFD on details of Cooperative Wildlife Damage Management Projects, and at the request of Game and Fish, WS personnel may assist Game and Fish personnel as agreed upon with other wildlife removal or damage mitigation projects.

#### Article 6

##### NDDA agrees:

- A. To act as a fiscal agent for the state in regards to moneys, appropriated for Wildlife Services.

- B. To reimburse WS for services rendered under this cooperative agreement and the Cooperative Service Agreement between NDDA and WS.
- C. To designate an authorized representative who will serve as a contact under this Agreement.
- D. To meet annually or more often if mutually agreed to discuss work activities associated with this cooperative agreement

#### Article 7

All WS aerial hunting activities will be conducted in accordance with applicable federal, state, and local laws.

#### Article 8

Nothing in this Agreement shall prevent any other State, organization, or individual from entering into separate Agreements with WS for the purpose of controlling damaging wildlife.

#### Article 9

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit to arise there from.

#### Article 10

WS shall hold the NDGFD harmless from any liability arising from the negligent act or omission of a Government officer or employee acting within the scope of his or her employment to the extent compensation is available pursuant to the Federal Tort Claims Act (FTCA), 28 USC 2671 et. seq., except to the extent that aforesaid liability arises from the negligent act or omissions of the NDGFD, its employees, agents, or subcontractor(s). Such relief shall be provided pursuant to the procedure set forth in the FTCA.

#### Article 11

This Agreement shall become effective upon date of final signature and shall continue through **June 30, 2011**, and is subject to renewal by mutual agreement of both parties. Further, this Agreement may be amended at any time by mutual agreement of the parties, in writing. The Agreement may be terminated by either party upon 60 days written notice to the other party. Further, that in the event NDGFD does not, for any



Exhibit A  
 Agreement No: 2009-89  
 Account Code: 1400  
 Agreement Number: 09-73-38-6214-RA  
 Accounting Code: 973-7338-014

**WORK/FINANCIAL PLAN**

Between

**NORTH DAKOTA DEPARTMENT OF AGRICULTURE  
 NORTH DAKOTA GAME AND FISH DEPARTMENT**

And

**U.S. DEPARTMENT OF AGRICULTURE  
 ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
 WILDLIFE SERVICES**

OCT 19 2009

STATE ADDRESS	North Dakota Department of Agriculture 600 E. Boulevard Ave. Dept. 602 Bismarck, ND 58505-0020
COOPERATIVE CONTACT	Doug Goehring, Commissioner Phone: 701-328-4754 Fax: 701-328-4567
AGREEMENT NUMBER	2009-89A
ACCOUNTING CODE NUMBER	1400
AGREEMENT AMOUNT	\$533,700
LOCATION	Throughout North Dakota
AGREEMENT PERIOD	July 1, 2009 – June 30, 2010

This Work/Financial Plan is developed pursuant to a cooperative agreement between the North Dakota Department of Agriculture and the North Dakota Game and Fish Department (STATE) and the United State Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services, hereinafter referred to as APHIS. It outlines the project objectives, project benefits, plan of action, reporting requirements, stipulations and restrictions, and the costs estimates for the management of human/wildlife conflicts in North Dakota.

**I. Objectives and Need for Assistance**

Specific goals are to: design and implement an integrated wildlife damage management program in North Dakota to mitigate wildlife conflicts and associated economic impacts to agriculture, natural resources, property, and human health and safety. Work activities will be directed to the management of wildlife conflicts caused by furbearers, waterfowl, other state-managed wildlife and blackbirds. Wildlife damage management activities may include the use of all legal and authorized equipment, including EPA-registered pesticides.

**II. Benefits Expected**

A professionally managed wildlife damage management program will help alleviate the economic impacts associated with human/wildlife conflicts to agriculture and natural resources; will protect human health and safety; and public and privately-owned property. Eligible activities for this agreement include work related to coyotes, beaver, other state-managed wildlife and blackbirds. Any activities for which fees are charged and any work in urban areas by APHIS are ineligible activities. Up to \$149,300 of General Funds may be used to manage blackbird damage to sunflowers and other crops.

**III. Plan of Action**

The STATE agrees to reimburse APHIS for salaries and benefits of 9 Wildlife Specialists, 1 pilot, and other necessary personnel performing duties under this agreement. APHIS agrees to supply and replace as needed vehicles used in the operation of the wildlife damage management programs. APHIS will submit an invoice of all reimbursable items as agreed upon in this financial plan. Invoices will clearly indicate time spent by each individual on blackbirds, other eligible activities, and non-eligible activities. APHIS will maintain all original bills or invoices for 3 years or until the STATE's records have been audited. All invoices will be billed quarterly and the STATE will periodically verify that billed amounts are adequately supported and reasonable.

Nothing in this Work/Financial Plan shall preclude APHIS from entering into other agreements to assist other entities to manage human/wildlife conflicts, specifically wildlife conflicts at airports or conflicts within the urban confines of Bismarck/Mandan, Devils Lake, Dickinson, Fargo/West Fargo, Grand Forks, Jamestown, Minot, Valley City, Wahpeton, and Williston.

**IV. Performance Measures**

Performance measures are established for this agreement to ensure the successful resolution of specific human/wildlife conflicts. These performance measures include:

<b>Performance Measures</b>		
<b>Species</b>	<b>Number of Landowners Assisted</b>	<b>Number of Work Tasks/Landowner</b>
Beaver	250	1175
Coyote	450	2925
Raccoon	30	60
Badger	5	10
Red Fox	5	12
Blackbird	250	600

**V. Reports**

All APHIS activities will be documented through the APHIS management information system and fiscal report system. All necessary reports will be provided to the STATE, which will include:

- all federal funds available and spent for FFY10 and FFY11, including federal funds available for the cooperative wildlife damage management program for North Dakota
- the salaries of the employees mentioned in the work plan of this contract at the beginning and at the end of the contract
- the amount of monies received for the disposition of furs, skins, and specimens taken during official work activities used by APHIS to fund its program activities as stated in Section 4-01-17.3 of the North Dakota Century Code
- the Pilot's flight time versus time spent on other endeavors
- full documentation of the Specialists' time directed toward eligible activities including travel, bad weather, miscellaneous, or similar categories
- the results of established performance measures, specifically trends in delivery of program services

Exhibit A  
Agreement No: 2009-89  
Account Code: 1400  
Agreement Number: 09-73-38-6214-RA  
Accounting Code: 973-7338-014

**VI. Stipulations and Restrictions**

All operations shall be under the direct supervision of APHIS. APHIS will conduct program activities in accordance with its established operating policies and all applicable state and federal and WS regulations. An agreement for Control of Animal Damage on Private Property (ADC Form 12A) will be executed between APHIS and the landowner, lessee, or administrator before any work is conducted. Only APHIS employees and WS Volunteer Program participants will conduct wildlife damage management activities.

**VII. Effectiveness of Agreement:**

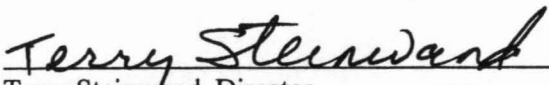
This agreement is not effective until fully executed by all parties.

NORTH DAKOTA DEPARTMENT OF AGRICULTURE  
Bismarck, ND  
Tax Identification Number: 45-0309764

  
\_\_\_\_\_  
for Doug Goehring, Commissioner

  
\_\_\_\_\_  
Date

NORTH DAKOTA GAME AND FISH DEPARTMENT  
Bismarck, ND  
Tax Identification Number: 45-6002467

  
\_\_\_\_\_  
Terry Steinwand, Director

  
\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
WILDLIFE SERVICES  
Fort Collins, CO  
Tax Identification Number: 41-0696271

  
\_\_\_\_\_  
Jeff Green, Regional Director

  
\_\_\_\_\_  
Date